



November 28, 2000

Ms. Elaine S. Hengen  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR2000-4539

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 141708.

The City of El Paso Police Department (the "department") received four requests for information concerning the department's Public Integrity Unit.<sup>1</sup> You have released most of the information but claim that the remaining information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We will first address the department's arguments under section 552.101. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing

---

<sup>1</sup>The department asks this office to clarify when facsimile transmissions are deemed received for the purposes of the Public Information Act (the "Act"). A request made by electronic mail or facsimile transmission must be addressed to the governmental body's officer for public information or the officer's designee. Gov't Code § 552.301(c). Further, the governmental body must ask for the attorney general's decision not later than the 10<sup>th</sup> business day after the date of receiving the written request. Gov't Code § 552.301(b). Currently, this office interprets the above sections to mean that a governmental body must ask for an attorney general decision within 10 business days of the fax's initial receipt during normal business hours. Please note, however, that we are preparing to release an Open Records Decision addressing the issue of what constitutes a "business day" for the purposes of the Act.

by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Based on your arguments and our review of the information, we find that the department must withhold the information that you have identified in Exhibit B as protected under section 552.101 in conjunction with common law privacy. However, we do not agree that the information highlighted in the second statement contained in Exhibit I is excepted from required public disclosure under common law privacy. That information may not be withheld under section 552.101.

The department also claims that some of the information contained in Exhibits H and I is excepted from required public disclosure under section 552.108 of the Government Code. Section 552.108(b) provides in pertinent part as follows:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(b)(1). Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In regard to the information in Exhibit H, you explain that it pertains to undercover operations that would be jeopardized if released. In regard to the information in Exhibit I, you explain that the information pertains to ongoing criminal investigations and that release of this information would interfere with the investigations. Based on these representations as well as our review of the information, we believe that the portions of Exhibits H and I that you have identified are subject to section 552.108(b)(1). Accordingly, the department may withhold the marked information in these exhibits under 552.108(b)(1).

The requested records also contain information that is excepted from disclosure under section 552.117(2). The department must withhold those portions of the records that reveal the officers' home addresses, home telephone numbers, and social security numbers. We agree with the markings the department has made, but we have made one additional marking on information contained in Exhibit I. The department must withhold these types of information under section 552.117(2).

Finally, section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, you must withhold all Texas driver's license numbers.

In summary, under section 552.108(b)(1), the department may withhold the highlighted information that we have marked in Exhibits H and I. Moreover, under section 552.101 in conjunction with common law privacy, the department must withhold the highlighted information that we have marked in Exhibit B. Furthermore, under section 552.117(2), the department must withhold the highlighted information that we have marked in Exhibits B, G, and I. Finally, under section 552.130, the department must withhold motor vehicle information in Exhibit G. The remaining responsive information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

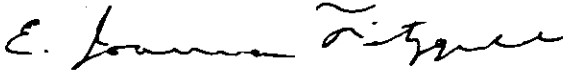
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Joanna Fitzgerald". The signature is fluid and cursive, with the first name "E." and last name "Fitzgerald" clearly distinguishable.

E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF/er

Ref: ID# 141708

Encl: Submitted documents

cc: Mr. Patrick C. McDonnell  
El Paso Times  
P.O. Box 20  
El Paso, Texas 79999  
(w/o enclosures)

Ms. Leticia Zamarripa  
KDBC-TV  
2201 E. Wyoming Avenue  
El Paso, Texas 79903  
(w/o enclosures)

Mr. Louie Gilot  
El Paso Times  
P.O. Box 20  
El Paso, Texas 79999  
(w/o enclosures)